IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8249 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMENDRA G. MANKAD

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for the Petitioner.

Ms.Harsha Devani, Assistant GOVERNMENT PLEADER, for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 31/01/2002

ORAL JUDGEMENT

1. It is a matter of regret that in spite of the interim order passed by this Court (Coram : C.K. Buch, J.) as back as on 24th September, 2001, the concerned Officer had the guts to defy the said order and the interim order, unfortunately, is not yet complied with. It is also required to be noted that this Court (Coram : A.R. Dave, J.) passed the following order on 29.11.2001

:-

" ... ...

Learned AGP Shri P.R. Abichandani has submitted that in pursuance of order dated 6.11.2001, Shri M.A. Shaikh, Deputy Section Officer, is present in the court and the said officer has been duly informed about the order passed by this Court dated 24.9.2001.

By an order dated 24.9.2001, this Court had directed the respondents to pay 90% of the amount of gratuity payable to the petitioner. It is deplorable that in spite of the said order, respondent No.2 has addressed a letter to the District Treasury Officer on 19.10.2001 that no amount should be paid to the petitioner. Respondent No.2 shall forthwith withdraw the instructions given to the District Treasury Officer and if it is not done within a period of one week, from today, contempt proceedings shall be initiated against the said respondent.

S.O. to 13.12.2001 to know the progress.

... ..."

Ms.Harsha Devani, learned AGP, however, states that the Department could not comply with the order in question as the Department was contemplating filing of a Letters Patent Appeal. She further submitted that there is no deliberate intention to flout the order of this Court. It is also required to be noted that on 13.12.2001, the following order was passed by this Court (Coram : A.R. Dave, J.) :-

" ... ...

Learned A.G.P. Shri Abichandani has submitted that for some reason the order dated 24th September, 2001 as well as order dated 29th November, 2001 passed by this Court could not be complied with. In pursuance of the instructions received from Shri P.M. Christian, Deputy Secretary, Narmada and Water Resources Department, who

is present in the Court, learned A.G.P. prays for a week's time, so that the directions referred to hereinabove can be complied with. S.O. to 21.12.2001.

... ..."

It is not in dispute that the interim order passed by this Court (Coram : C.K. Buch, J.) on 24th September, 2001, is not stayed by the appellate court and, still, the concerned Officer continued to flout the order. The tendency on the part of certain Officers to defy the orders of the Court is required to be deprecated, as such tendency is increasing day by day. The magnanimity of the Court should not be taken as a weakness of the Court. In my view, C.R. Mody, respondent No.2, has acted in a most contemptuous manner. The Secretary of the concerned Department may look into the conduct of this Officer and Note to that effect must be made in his Service Record.

The order passed by this Court is flouted by the said Officer. Once an interim order is passed by this Court, it is required to be complied with forthwith unless, in the meanwhile, the said order is stayed by the appellate court. It is hoped that, in future, appropriate care will be taken by the concerned Officer before taking the orders of this Court lightly and in a casual fashion, as has been exhibited in the instant case.

2. The petitioner was initially appointed in the Department from 2nd February, 1965 as a Supervisor. Subsequently, he was promoted as Deputy Engineer in 1980 and, ultimately, he retired from service on 30th June, 1997, while holding the post of Deputy Executive Engineer. A few days prior to his retirement, he was subjected to a charge-sheet dated 20th June, 1997. The same is annexed as Annexure `A' at page 23 in the compilation. The aforesaid charge-sheet was issued in connection with the contract work which was undertaken between 1982 and 1985, and as per the charge-sheet, in connection with some contract work, the petitioner was negligent in discharging his duty and because of the same, there was financial loss to the Government of a sizable amount. As per the allegation, the concerned Contractor abandoned the work after 6.9.1985 and the petitioner was negligent in the matter of recovering the material, etc., from the Contractor. It was found that certain material was not available at the site and, ultimately, the Government suffered monetary loss. On

that basis, departmental enquiry is initiated against the petitioner.

3.It is not in dispute that after receiving the said charge-sheet, the petitioner has already retired from service on attaining the age of superannuation on 30th June, 1997. The said departmental enquiry is pending against the petitioner since 1997 and as per the averment in the petition, the same has not proceeded further, even though reply to the charge-sheet has been filed by the petitioner as back as in the year 1997. This shows how causally these enquiry proceedings are going on against Government employees. In the meanwhile, the petitioner, by his letter dated 16.8.1999, requested the authority to release the gratuity amount as per the Government Resolution to that effect. As per the provisions contained in Rule 189-B of the Bombay Civil Services Rules, 1959, provision is made as regards payment of gratuity. The aforesaid provision is annexed with the petition as Annexure `H'. The portion of Rule 189-B of the BCSR, which is relevant for the purpose of deciding the present controversy, reads as under :-

> " ... ...
>
> Provided that_____
>
> (a) if a charge-sheet is not issued or criminal prosecution is not launched, as the case may be, on or before the date of retirement, ninety percent death-cum-retirement gratuity shall be paid, retaining ten percent or rupees five thousand which ever is less : if the concerned department is of the opinion that some inquiry or prosecution is contemplated;
>
> (b) If the Departmental Inquiry or Prosecution is launched (i.e. charge-sheet issued or First Information Report filed, as the case may be) prior to retirement, but the departmental inquiry or prosecution, is not concluded (i.e. the competent authority's order on the inquiry officer's report not issued or judgment of trial court not delivered, as the case may be), within two years from the date of

the retirement ninety percent death-cum-retirement gratuity shall be released, retaining ten percent or rupees five thousand which ever is less.

... ..."

By a subsequent Resolution, the limit of Rs.5,000/- is raised to Rs.15,000/-. Relying upon the aforesaid provision, the petitioner applied for releasing 90% of the gratuity amount as per the said provision. More than two years' period has elapsed after his retirement, and the enquiry is still not concluded. However, in spite of this clear-cut statutory provision, the said amount was not released in his favour and, therefore, the said action is challenged by the petitioner by filing this petition.

4. At the time of admitting this matter, this Court (Coram : C.K. Buch, J.) passed the following order :-

" ... ...

Leave to correct the date in the relief clause.

Rule returnable on 6.10.2001.

Respondents are directed to disburse the amount to the tune of 90% as per the Notification bearing No.NVM-1080-3507-P dt. 10.12.1987 (Annex. G relating to the provisional D.C.R.G.-grant-of-with reference to the Departmental Inquiry / Prosecution.

... ..."

However, as pointed out earlier, unfortunately, the said order has not yet been complied with by the Department even though the said order is not stayed by the Division Bench. Now, today, the matter has reached final hearing and the same is accordingly disposed of finally.

5. On behalf of the Department, affidavit-in-reply has been filed by one P.M. Christian, Deputy Secretary of Narmada, Water Resources & Water Supply Department, Gandhinagar. Relevant averments are contained in paragraphs 4 and 5 of the said reply, which read as under :-

" ... ...

4. I respectfully say and submit that at present the Government Resolution of Finance Department No.DPP-1-99-496-D-131(10)-P dated 23.6.2000 is the policy. It is placed at Annexure A. According to para 7(7)(c) if the Departmental Inquiry/prosecution is launched (charge sheet issued or FIR filed, as the case may be) prior to retirement but the Inquiry / Prosecution is not concluded within two years from retirement, 90% DCRG shall be released retaining 10 percent or Rs.15,000/- whichever is less.

Another policy decision was found in principle No.4 in annexure I shown in note 1 below Rule 25 of Gujarat Financial Rules, which reads as under :

When a pensionable Government servant is concerned in any loss or irregularity, the authority investigating the case should bear in mind the provisions contained in rules 188, 189 and 189-B of the Bombay Civil Services Rules, Vol. I as amended from time to time and immediately inform the Audit Officer responsible for reporting on his title to pension or death-cum-retirement gratuity and the authority competent to sanction his pension or death-cum-retirement gratuity and it shall be the duty of latter while making a note of the information, to see that in accordance with the provision in the Bombay Civil Services Rules, gratuity or death-cum-retirement gratuity is not paid before a conclusion is arrived at as regards the responsibility of the Government servant and final orders are issued thereon.

5. I respectfully say and submit that the obvious contradiction between above two rule positions lead the respondents to seek the guidance of the Finance Department. The respondents have received this guidance on 29.11.2001. The Finance Department has opined that if the competent Officer feels

that the amount likely to be recovered from the retired person is more than Rs.15,000/-, he can withhold full or partial gratuity.

... ..."

In paragraph 6 of the reply, reference is made regarding alleged financial loss caused to the Department.

Relying upon the aforesaid averments in the affidavit-in-reply, it was submitted by Ms.Devani, learned AGP, that since there were conflicting provisions, the concerned Officer of the Department took the opinion of the Finance Department and, ultimately, decided not to release the aforesaid amount and considering the opinion of the Finance Department, it was decided not to release the amount of gratuity in favour of the petitioner.

6. I have heard Mr.Hathi, learned Advocate for the petitioner, and Ms.Devani, learned AGP, for the respondents.

In my view, the stand taken by the Department is wholly untenable. It is required to be noted that so far as the provisions of Rule 189-B of BCSR are concerned, the same are framed under Article 309 of the Constitution of India. The said Rule, therefore, is mandatory in nature and no option is available with the Department but to follow the aforesaid rule. Even if there are other inconsistent Rules, like the one which is pressed into service in this case by the Department, viz., the Gujarat Financial Rules, 1971, they cannot override the statutory Rules, which' are framed under Article 309 of the Constitution of India and, therefore, there was absolutely no justification on the part of the Department to withhold the aforesaid amount of gratuity in view of the aforesaid clear-cut provisions contained in Rule 189-B of the BCSR. Mr.Hathi strongly submitted that there was no justification to refer the case of the petitioner to the Finance Department, as, according to him, in almost all such cases, after a period of two years from the date of retirement, 90% of gratuity amount is released in favour of the delinquent officer. The clear provisions of law are ignored by the concerned Officer. Therefore, the aforesaid action of the

concerned Officer, who is instrumental in withholding the just claim of the petitioner, is required to be deprecated. So far as the alleged ground about financial loss to the Government as highlighted in the reply is concerned, it is required to be noted that the alleged incident is of the period between 1982 and 1985 and the charge-sheet was issued after a period of about 12 years. If the Department was really concerned with any such financial loss, prompt action could have been taken at the earliest without waiting for more than 12 years. After waiting for 12 years just for the purpose of issuance of charge-sheet and remaining silent for a period of more than five years after issuing the charge-sheet itself shows how a casual approach is exhibited by the Department in the instant case. If really the State has suffered any loss, enquiry was required to be initiated against the concerned Officer, who was instrumental in delaying the aforesaid proceedings for more than 12 years. It is also required to be noted that once a Government employee has retired from service and if departmental enquiry is required to be initiated against him, such departmental enquiry is required to be completed at the earliest so that he may not have to remain under the torture of departmental proceedings even after his retirement. Therefore, it is expected that, in such cases, enquiry is required to be completed within a period of two years from the date of retirement and if the Department has failed to do anything within the aforesaid period of two years, then, naturally, as per the provisions of BCSR, 90% gratuity amount is required to be paid to such employee. Therefore, in all such cases, it is expected that after retirement of a Government servant, within two years, enquiry should be completed. In the instant case, the impugned action of withholding gratuity amount, for the incident which had occurred as back as 1982-'85, therefore, clearly exhibits total non-application of mind on the part of the concerned Officer. It is a matter of regret that the incident in question had taken place as back as 1982-'85 and yet, the enquiry was initiated after such a long time. It is also required to be noted that even after serving the charge-sheet as back as in the year 1997, till today, nothing concrete has been done in the departmental proceedings and the Government has remained silent except appointing Enquiry Officer.

7. At this stage, Mr.Hathi submitted that it is not open for the Department to initiate action after such a long time as the incident is a stale one, i.e. as back as of 1982-'85. However, since there is no specific

prayer in this connection, I am not discussing the aforesaid point any further in this petition, but suffice it to say that the way in which the things have moved at a snail's pace in the matter exhibits a very sorry state of affairs on the part of the administration.

8. So far as denial of gratuity amount is concerned, in view of the clear-cut provision under the BCSR, the respondents are duty bound to comply with the same and on completion of the period of two years from the date of retirement, the concerned Government employee is entitled to receive 90% of the gratuity amount as per the said provision. The petitioner was entitled to have the said gratuity amount after a period of two years from the date of retirement and, accordingly, he is entitled to receive the said amount from 30th June, 1999. The aforesaid amount is withheld without any valid justification worth the name and, therefore, the respondents are directed to pay interest at the rate of 12% per annum from the aforesaid date till the date when actually the amount is paid to the petitioner. The respondents are directed to pay the aforesaid amount to the petitioner within a period of one month from the date of receipt of the writ of this Court. If the aforesaid payment is not made, as indicated above, the respondents shall pay interest at the rate of 18% per annum after a period of one month, as indicated above. In my view, the stand taken by the Department is absolutely arbitrary and unjust and the petitioner was compelled to file this petition, though it was expected of the Department to do justice to him, I direct that the respondents shall pay costs of Rs.5,000/to the petitioner within a period of one month from the date of receipt of the writ of this Court.

The Department may also verify the said fact as to who was responsible for such delay and if it is found that any particular Officer has tried to delay the aforesaid question of payment of gratuity, which has, ultimately, resulted in payment of interest, it will be open for the Government to recover the said amount from the erring Officer so that the State Exchequer is not subjected to any further burden on this aspect.

Petition is accordingly allowed. Rule is made absolute.

The Office may send a copy of this order to respondent No.2 for his information.

31st January, 2002 (P.B. Majmudar, J.)

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(apj)